



**Flathead County**  
**Planning & Zoning**  
1035 1<sup>st</sup> Ave W, Kalispell, MT 59901  
Telephone 406.751.8200 Fax 406.751.8210



**APPLICATION FOR A VARIANCE**

*Submit this application, all required information, and appropriate fee (see current fee schedule) to the Planning & Zoning office at the address listed above.*

**FEE ATTACHED \$** 500

*Before completing this application please read instructions on page 4.*

1. **OWNER:**  
Name: Mule Shoe Outfitters  
Address: PO Box 322 Phone: 928-231-0165  
City/State/Zip: West Glacier, MT 59936  
Email: rideaz@bwmall-us  
**INTEREST IN PROPERTY:** owner
2. **APPLICANT:** *(If different from above)*  
Name: Virginia & Paul DeToni  
Address: PO Box 1108 Phone: 928-231-0165  
City/State/Zip: Wickenburg, AZ 85358
3. **TECHNICAL/PROFESSIONAL ASSISTANCE:** *(If applicable)*  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_ Phone: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Email: \_\_\_\_\_  
Paul - (406) 253-6925 - cell phone
4. **LOCATION OF PROPERTY FOR WHICH VARIANCE IS SOUGHT:**  
Physical Address: 12135 Hwy 2 East, West Glacier, MT
5. **ZONING DISTRICT:** Middle Canyon **ZONING DESIGNATION:** Res?
6. **DATE PROPERTY ACQUIRED:** 9/14/99
7. **LEGAL DESCRIPTION:**  
Subdivision *(if applicable)* \_\_\_\_\_ Lot/Tract(s) Lot 4 + tract 4  
Assessor # 0982497 Section 2 Township 31N Range 19W

8. **REQUEST FOR A VARIANCE FROM THE PROVISIONS OF** (State Section, Part, and Paragraph of the Zoning Regulations): CALUDS Chapter 4.1 (F) (9)

9. **THIS IS A REQUEST FOR A VARIANCE IN RELATION TO THE PROVISIONS OF THE REGULATIONS** (check one below):

Area \_\_\_\_\_ Yard \_\_\_\_\_ Height \_\_\_\_\_  
Coverage \_\_\_\_\_ Parking \_\_\_\_\_ Other X

10. **STATE SPECIFICALLY THE CHANGE(S) PROPOSED AND THE REASON(S) SUCH CHANGE(S) ARE NECESSARY** (use additional sheet if necessary):

(See Attached)

11. **EXPLAIN HOW YOUR CASE CONFORMS TO EACH OF THE FOLLOWING REQUIREMENTS** (be complete, use additional sheet if necessary):

A. Strict compliance with the provisions of these regulations will limit the reasonable use of the property, and deprive the applicant of rights enjoyed by other properties similarly situated in the same district.

(SEE ATTACHED)

B. The hardship is the result of lot size, shape, topography, or other circumstance over which the applicant has no control.

(SEE ATTACHED)

C. The hardship is peculiar to the property.

(SEE ATTACHED)

D. The hardship was not created by the applicant.

(SEE ATTACHED)

E. ✓ The hardship is not economic (*where a reasonable or viable alternative exists*).

(SEE ATTACHED)

F. ✓ Granting the variance will not adversely affect the neighboring properties or the public.

(SEE ATTACHED)

G. ✓ The variance requested is the minimum variance, which will alleviate the hardship.

(SEE ATTACHED)

H. Granting the variance will not confer a special privilege that is denied other similar properties in the same district.

(SEE ATTACHED)

12. **ATTACH A PLOT PLAN OR DRAWING.**

(SEE ATTACHED)



**Flathead County**  
**Application for a Variance**

**Applicant:** Mule Shoe Outfitters  
**Property:** 12135 Hwy 2 East  
West Glacier, Montana

**SUPPLEMENTAL INFORMATION**

**QUESTION No. 8: Request for Variance from**

- (1) CALURS 4.1(F)(9), Set-back from Highway 2 of 150 feet.

**Question No.10: STATE SPECIFICALLY THE CHANGE(S) PROPOSED AND THE REASON(S) SUCH CHANGES ARE NECESSARY:**

Applicant requests a variance from the 150-foot set-back requirement of CALURS 4.1(F)(9) with regard to the log structure erected on the property. The change Applicants requests is to allow Applicant's building to remain in its current location, which is 50-75 feet beyond the 150 foot highway right of way.

A map showing the location of the parcel and a plat showing location of the building and the distances to the highway right of way are attached at Tab A.

When the building was built on the property, with the appropriate building permits, it was situated 200 feet from the highway – 50 feet beyond the 150 foot highway right of way. Applicant believed that would conform with the canyon zoning because applicant believed the property was in the designated community or service center, which under CALURS 4(F) (9) requires 40 feet of the set-back along U.S. Highway 2. In fact, the property lies just outside of the designated community or service center.

Under the CALURS, the distinction between the designated community or service center and outlying areas is not explained and no justification for differences in the set-backs between the service center and the outlying areas provided. It is an indiscriminate line drawn across the highway, which results in some property owners being able to use a greater portion of their land than others. Here, the Applicant was not told during his construction of the building that the building would have to be moved. Instead, now he is faced with losing the use of the front portion of his property and expending the cost of moving his building back an additional one-hundred feet from the highway. The costs of moving this building certainly outweigh the unknown and unstated reasons why such a large set-back is needed on this parcel of land.

**Question No. 11: EXPLAIN HOW YOUR CASE CONFORMS TO EACH OF THE FOLLOWING REQUIREMENTS:**

**A. Strict compliance with the provisions of the regulations will limit the reasonable use of the property, and deprive the applicant of rights enjoyed by other properties similarly situated in the same district.**

Strictly complying with the 150-foot set-back requirement will limit Applicant's reasonable use of the property substantially. If the full 150 foot set-back is enforced, Applicant will spend tens of thousands of dollars to move the structure, which would then be located 300 feet from the highway (150 foot right of way plus 150 foot zoning set back). Applicant will lose the use of that portion of the property. Other properties in the area (whether given a variance, or within the service center or grand fathered-in) have buildings located closer to the highway and are thus more visible to passing tourists.

**B. The hardship is the result of the lot size, shape, topography, or other circumstance over which the applicant has no control.**

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This parcel sits just outside the designated community or service center, where only a 40- foot set-back is required from U.S. Highway 2. As more and more development spreads along the highway outside of West Glacier, Montana, the zoning regulations and jurisdiction of the service center need also to expand. Additionally, the shape of the parcel and location of the highway right of way access encouraged Applicant to position the building on the parcel where it currently sits, which allows for safe access from the busy highway in a place where the building is not imposing or obstructing.

**C. The hardship is peculiar to the property.**

The number of parcels located on U.S. Highway 2 is limited, especially those who are undeveloped and outside the community service center. This hardship may not be limited to solely this property, but to very few properties subject to this jurisdiction of CALURS.

**D. The hardship was not created by the applicant.**

The unclear language of CALURS caused interpretation of the set-back to be ambiguous, at best. A portion of the highway frontage must have a 40-foot set-back, while other portions must have a 150-foot set-back, but no map is included. Applicant reasonably believed the property was within the community or service center, which was a reasonable interpretation given the proximity of the property to the town of West Glacier and commercial development and close proximity of buildings to the highway which surrounds this property.

**E. The hardship is not economic (where a reasonable or viable alternative exists).**

The hardship of requiring Applicant to strictly comply with the zoning requirement of a 150-foot set-back will require Applicant to move the building back an additional 100- feet from the current location, the result is an economic and non-economic hardship on Applicant. Obviously the cost of moving the structure will be substantial. No viable or reasonable alternative exists. And Applicant will be prohibited from building on that portion of the property located within 150-feet of the highway, which constitutes a loss of enjoyment of the property they purchased and intended to use in a productive and meaningful way for their established, community-based and enriching service of horseback rides in the Park. This was the intended use on the original plan. We are now planning an art gallery gift shop

**F. Granting the variance will not adversely affect the neighboring properties or the public.**

Granting a variance to allow the building to remain in its current location (surveyed at 50-feet from the highway right of way at its closest porch corner and 75-feet from the highway right of way at the other corner) will not adversely affect the neighboring properties or the public. The neighboring properties along the highway already engage in commercial operations of their own – Glacier Helitours and Great Northern Raft Company. The placement of the Applicants building will not detract or affect their property or commercial operations in any way. Other properties in the area (whether given a variance, or within the service center or grand fathered-in) have buildings located closer to the highway and are thus more visible to passing tourists. The other neighboring property owners are a significant distance from the building, and no adverse reactions are anticipated.

**G. The variance requested is the minimum variance, which will alleviate the hardship.**

The variance Applicant is requesting – allowing his building to remain in its current location, which is 50-feet beyond the 150-foot highway right of way (or 200-feet from the centerline of the highway right of way), is the minimum variance which would alleviate this hardship. No other alternative exists, other than to move the building which as articulated above would result in economic and non-economic hardship to Applicant.

**H. Granting the variance will not confer a special privilege that is denied other similar properties in the same district.**

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Properties just a short distance further east on U.S. Highway 2 may build up to 40-feet of the highway. Buildings erected prior to the effective date of CALURS are built closer to the highway. Allowing this Applicant to keep his building 200-feet from the highway does not confer a special privilege upon him that is denied others.

Not to Scale

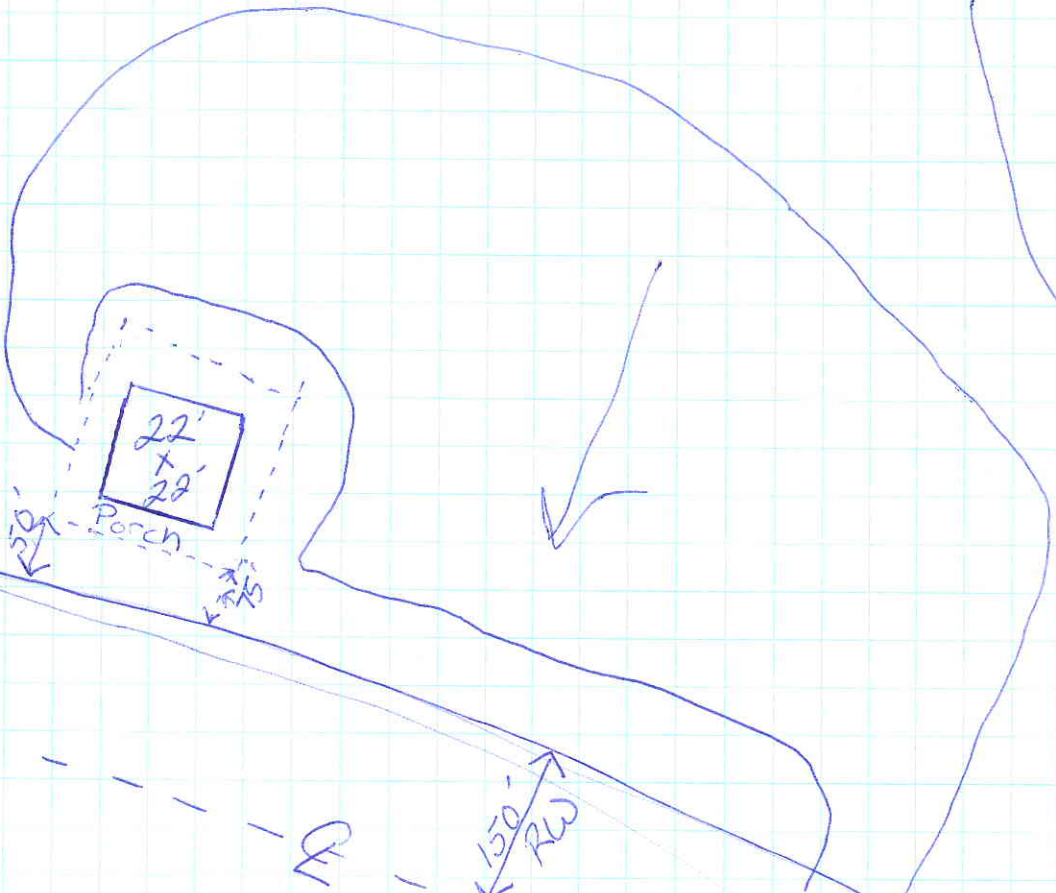
GLACIER HELICOPTER TOURS

N 89° 59' 16" E 711.81'

N 00° 40' 44" E 511

N 89° 56' 49" 389.47'

GREAT NORTHERN RAFT



150' RW

Hwy 2

Heavens Peak

To Glacier Campground

Rawhide Restaurant & Gift Shop Trail Rides

*I hereby certify under penalty of perjury and the laws of the State of Montana that the information submitted herein, on all other submitted forms, documents, plans or any other information submitted as part of this application, to be true, complete, and accurate to the best of my knowledge. Should any information or representation submitted in connection with this application be incorrect or untrue, I understand that any approval based thereon may be rescinded or other appropriate action taken. The signing of this application signifies approval for FCPZ staff to be present on the property for routine monitoring and inspection during the approval and development process.*

Vignar J. [Signature]  
Owner/Applicant Signature

2/10/10  
Date

### **INSTRUCTIONS FOR VARIANCE APPLICATION**

1. ANSWER ALL QUESTIONS. Answers should be clear and contain all the necessary information.
2. In answering Question 7, refer to the classification system in the Zoning Regulations and explain in detail the specific standards from which the applicant is seeking relief.
3. In answering Question 9, be specific and complete. In this and all other questions, if additional space is needed you may use additional paper, and list which section number you are continuing.
4. Answer Question 10, A-H completely and fully.
5. A copy of the plot plan or site plan must be submitted with each application *(Please include 6 copies if you submit a size larger than 11x17).*
6. A **Certified** Adjoining Property Owners List must be submitted with the application *(see forms below)*. The list will be sent directly to the Planning & Zoning office, unless you request otherwise. This list is valid for a period of 6 months from date generated. You may also get a certified adjoining landowners list from a title company if you choose.
7. A fee per the FCPZ schedule of fees for a variance application must be submitted with this application to cover the cost of necessary investigation, publication, mailing and processing procedures.

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